

RISK MANAGEMENT PROGRAM (RMP) RULE

ISSUE SUMMARY:

The Risk Management Program (RMP) applies to all stationary sources (facilities) with chemical processes that use more than a threshold quantity of a regulated substance. There are approximately 12,000 such facilities nationwide. In December 2019, EPA finalized revisions to the RMP regulations to reconsider rule changes made in January 2017. The revisions addressed potential security risks with certain information disclosure provisions of the 2017 rule, removed most new accident prevention program requirements added by the 2017 rule in order to reduce regulatory burdens and maintain consistency with the OSHA Process Safety Management (PSM) standard, and made modifications to some other provisions of the 2017 rule. Several parties have filed petitions for judicial review of the 2019 final rule; that litigation is ongoing. Three parties also submitted petitions for reconsideration of the 2019 final rule. In September 2020, EPA issued a Federal Register notice of the Agency's denial of the three reconsideration petitions.

UPCOMING MILESTONES:

- **Late 2020** – In late 2020, EPA and opposing parties will file motions to govern the litigation over the 2019 final rule. Reconsideration petitioners will also likely file for judicial review of EPA's denial of their petitions, and it is likely that the Court will consolidate these cases with the litigation on the underlying rule.
- **Early 2021** – Based on the parties' motions, the Court will set a schedule for submission of written briefs and oral argument to occur in 2021.

BACKGROUND:

When Congress passed the Clean Air Act (CAA) Amendments of 1990, Section 112(r) required EPA to publish regulations and guidance for chemical accident prevention at facilities using substances that posed the greatest risk of harm from accidental releases. Regulations promulgated in 1996 were built upon existing industry codes and standards and required companies of all sizes that use certain listed regulated flammable and toxic substances to develop a Risk Management Program, which includes, in short, a hazard assessment, a prevention program, and an emergency response program, all of which are summarized in the source's risk management plan that it files with EPA.

The explosion that occurred at the West Fertilizer facility in West, Texas, on April 17, 2013, and killed 15 people, was followed by the issuance of Executive Order (EO) 13650, *Improving Chemical Facility Safety and Security*, on August 1, 2013. The EO directed the EPA and several other federal agencies, including DHS and OSHA, to, among other things, modernize policies, regulations, and standards to enhance safety and security in chemical facilities. The 2017 RMP Amendments final rule (82 FR 4594, January 13, 2017) ("2017 Amendments Rule") resulted from this direction.

The 2017 Amendments Rule contained various new provisions applicable to RMP-regulated facilities addressing prevention program elements, emergency coordination with local responders, and information availability to the public. The effective date of the rule was originally March 14, 2017. EPA received three petitions (from two industry groups and a group of states) for reconsideration of the 2017 Amendments Rule under CAA section 307(d)(7)(B). Petitioners raised several concerns with the rule, including potential security risks associated with new information disclosure requirements introduced in the 2017 Amendments Rule, concerns with EPA's economic analysis, concerns that EPA did not coordinate its rulemaking with the Occupational Safety and Health Administration, the timing of the finding by the Bureau of Alcohol, Tobacco, Firearms, and Explosives that the West Fertilizer incident was caused by arson, and other issues. After reviewing the petitions, the Administrator agreed to reconsider the 2017 Amendments Rule. EPA issued a proposed rule (the RMP Reconsideration proposed rule) to reconsider the 2017 Amendments Rule on May 30, 2018 (83 FR 24850), and a final rule (the RMP Reconsideration final rule) on December 19, 2019 (84 FR 69834).

The RMP Reconsideration final rule rescinded amendments to the major prevention program elements (Programs 2 and 3 requirements for safer technology and alternatives analyses, third-party audits, incident investigations), and several other minor regulatory changes, and rescinded other amendments relating to information availability. The final rule also modified regulations relating to local emergency coordination and emergency response exercises, and regulations for post-accident public meetings. In addition, the final rule changed compliance dates for some of these provisions and revised what needed to be reported in risk management plans, in order to address information elements associated with regulatory provisions that were rescinded or modified in the final rule.

From December 19, 2019 through February 18, 2020, several parties filed petitions for judicial review of the 2019 Reconsideration final rule in the DC Circuit Court of Appeals, claiming the rule is unlawful and must be vacated. Five petitions for judicial review were filed by a group of community petitioners (represented by Earthjustice); the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (USW); a group of states and cities led by the State of New York; the State of Delaware; and Harris County, Texas. In February 2020, EPA also received three petitions for reconsideration of the 2019 Reconsideration final rule. One petition was received from the group of community petitioners, another from the group of states and cities led by the State of New York, and a third from the USW. Petitioners raised a variety of objections to the 2019 RMP Reconsideration final rule, including claims that EPA ignored new information about serious chemical accidents, recommendations from the U.S. Chemical Safety and Hazard Investigation Board, information from EPA's Office of Inspector General, and the findings of other experts; that EPA relied on new rationale, statements, and studies that were not discussed in the proposed rule; and that the rule contradicted prior EPA findings. Petitioners also alleged procedural errors in the rulemaking process. After carefully considering the petitions, EPA denied the petitions because petitioners did not meet the CAA 307(d)(7)(B) criteria for mandatory reconsideration. EPA notified petitioners of the denials by letter and published a Federal Register notice of the petition denials on September 4, 2020 (85 FR 55286, September 4, 2020).

KEY EXTERNAL STAKEHOLDERS:

☒ Congress ☒ Industry ☒ States ☐ Tribes ☒ Media ☒ Other Federal Agency
☒ NGO ☒ Local Government ☐ Other: _____

During the rulemaking process, local emergency planning agencies and local emergency responders' concerns focused on the burden associated with coordination activities and participation in exercises. NGOs advocated for new accident prevention (particularly safer technology alternatives analysis) and information availability requirements. Industry opposed safer alternatives analyses and third-party audits and raised security concerns with the information availability provisions.

MOVING FORWARD:

The Office of Land and Emergency Management (OLEM) is leading follow up on implementation of the RMP Reconsideration final rule. EPA has conducted outreach to key stakeholders and is currently revising guidance documents to reflect rule changes. OLEM and the Office of General Counsel (OGC) are working with the Department of Justice to represent the government in the ongoing rule litigation.

LEAD OFFICE/REGION: OLEM

OTHER KEY OFFICES/REGIONS: OGC